

**Letter of Findings: 02-20181870  
Income Tax Administration  
For the Tax Years 2015-16**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

### HOLDING

Business provided sufficient documentation and analysis to support its position that it had acted in a reasonable manner regarding its tax duties. Therefore, penalty will be waived. While the Department is not permitted to waive interest, in this case there was an overpayment and the imposition of interest is moot.

### ISSUE

#### **I. Tax Administration—Penalty and interest.**

**Authority:** IC § 6-3-4-12; IC § 6-8.1-5-1; IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 897 N.E.2d 289 (Ind. Tax Ct. 2007); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the negligence penalty.

### STATEMENT OF FACTS

Taxpayer is a limited liability company ("LLC") treated as a partnership for federal purposes, which operates in Indiana. The Indiana Department of Revenue ("Department") issued assessments for corporate income tax, penalties, and interest relating to composite income tax returns which Taxpayer filed for four partners in 2015 and 2016. Eventually, it was agreed that there was no liability for income tax for these years and that a refund was actually due. The Department maintained that the composite returns were still filed after the statute of limitations and that penalty and interest were still due. Taxpayer protested the remaining liabilities for penalty and interest. An administrative hearing was conducted via telephone. This Letter of Findings results. Further facts will be supplied as required.

#### **I. Tax Administration—Penalty and interest.**

### DISCUSSION

Taxpayer protests the imposition of penalty and interest associated with the late payment of income tax for the partners via Taxpayer's composite return. Under IC § 6-3-4-12(i), a partnership shall file a composite adjusted gross income tax return on behalf of all nonresident partners. The composite return must include each nonresident partner regardless of whether or not the nonresident partner has other Indiana source income. In the instant case, Taxpayer did file a composite return each year, but in both years did not file by the statutory filing date. This resulted in the assessment of penalty and interest for both 2015 and 2016, as provided by IC § 6-3-4-12(d).

As a threshold issue, it is the Taxpayers' responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 897 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] defer to the agency's

reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision shall be entitled to deference.

The first relevant statute is IC § 6-3-4-12(h), which provides:

If a partnership fails to withhold and pay any amount of tax required to be withheld under this section and thereafter the tax is paid by the partners, the amounts of tax as paid by the partners shall not be collected from the partnership but it may not be relieved from liability for interest or penalty otherwise due in respect to the failure to withhold under [IC 6-8.1-10](#).

Next, IC § 6-3-4-12(m) states:

Notwithstanding subsection (k), a partnership is subject to a late payment penalty for the failure to file a return, pay the full amount of the tax shown on the partnership's return, or pay the deficiency of the withholding taxes due under this section for any amounts of withholding tax, including any interest under [IC 6-8.1-10-1](#), reported or paid after the due date of the return, as adjusted by any extension under [IC 6-8.1-6-1](#).

Pursuant to IC § 6-8.1-10-2.1(a), the Department may assess a negligence penalty if the taxpayer:

- (1) fails to file a return for any of the listed taxes;
- (2) *fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;*
- (3) *incurs, upon examination by the department, a deficiency that is due to negligence;*
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department.

*(Emphasis added).*

[45 IAC 15-11-2](#)(b) further states:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

Therefore, the Department may waive a negligence penalty when a taxpayer establishes that its failure to fulfil its tax duties was due to reasonable cause and not due to negligence. [45 IAC 15-11-2](#)(c). The taxpayer must demonstrate that it exercised ordinary business care in carrying out or failing to carry out a duty giving rise to the penalty. Reasonable cause is fact sensitive and will vary based on the facts of each individual case.

In this instance, Taxpayer has demonstrated that its actions were reasonable as described in [45 IAC 15-11-2](#)(c). Due to the unique complexity of these particular composite returns, the Department agrees that penalty may be waived in this case. However, the Department takes this opportunity to note that if this pattern is repeated, it is possible that penalty may not be waived again. Also, eventually it was determined that Taxpayer had an overpayment for this period and, while the Department is not permitted to waive interest under IC § 6-8.1-10-1(e), there is no base tax at issue upon which to impose interest.

## FINDING

Taxpayer's protest of the negligence penalty and interest is sustained.

January 31, 2020

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An [html](#) version of this document.